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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1511

LARRY DICKINSON AND GIBBS ADAMS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The first opinion of the court of appeals (Pet. App. A) is reported at 465 F. 2d 496; the second opinion of the court of appeals (Pet. App. B) is reported at 476 F. 2d 373. The first opinion of the district court (Pet. App. I) is not reported; the opinion of the district court on remand (Pet. App. J) is reported at 349 F. Supp. 227.

JURISDICTION

The judgment of the court of appeals (Pet. App. M) was entered on April 9, 1973. The petition for a writ of certiorari was filed on May 9, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether in the circumstances of this case a court order forbidding detailed newspaper accounts of a federal district court hearing, issued for the purpose of assuring a fair trial in a pending state prosecution, was so "transparently invalid" or patently frivolous that petitioners may not be held in contempt for knowingly violating it.

STATEMENT

1. Petitioners Larry Dickinson and Gibbs Adams, reporters for two Baton Rouge, Louisiana newspapers, were convicted of disobeying an order of the United States District Court for the Eastern District of Louisiana, in violation of 18 U.S.C. 401. Each was fined $300.

The record, which is detailed in the opinion of the court of appeals (Pet. App. A.1–A.17), shows that on April 1, 1970, one Frank Stewart, a civil rights worker in Baton Rouge, Louisiana, was indicted in a Louisiana state court on charges of conspiring to murder the mayor of Baton Rouge. Stewart thereupon commenced an action in the United States District Court for the Eastern District of Louisiana, alleging that the prosecution had been brought for the sole purpose of harassing him and suppressing his First Amendment rights. After a hearing, the district court declined to issue an order enjoining further state proceedings. *Stewart* v. *Dameron,* 321 F. Supp. 886 (E.D. La.). The Court of Appeals for the Fifth Circuit vacated the or-

der and remanded the case for a further evidentiary hearing, in accord with *Younger* v. *Harris*, 401 U.S. 37 (448 F.2d 396).

On November 1, 1971, the second hearing was held, limited solely to the issue of prosecutorial motive.[1] During this hearing, the district court concluded that evidence would be elicited that might prejudice the rights of litigants in the upcoming state trial.[2] Therefore, at 10:30 a.m., the court issued an order (Pet. App. A.3) prohibiting the news media, on penalty of contempt, from publishing details of the testimony adduced at the hearing, but allowing the media to report the fact that the hearing was being held.[3] The hearing adjourned at 11:55 a.m., to resume the

[1] At the conclusion of the second hearing, the district court rejected Stewart's claim, but the court of appeals remanded again for additional evidence. *Stewart* v. *Dameron*, 450 F.2d 278 (C.A. 5).

[2] Under Article 578 of the Louisiana Code of Criminal Procedure, no trial shall be commenced for felonies other than capital cases after two years from the date the prosecution begins. Stewart, indicted on April 1, 1970, was presumably going to be tried on the state charges before April 1, 1972—*i.e.*, sometime within five months after the district court hearing on November 1, 1971.

[3] The order, in its entirety, provided (Pet. App. C.2):

"And, at this time, I do want to enter an order in the case, and that is in accordance with this Court's Rule in connection with Fair Trial—Free Press provisions, the Rules of this Court.

"It is ordered that no, no report of the testimony taken in this case today shall be made in any newspaper or by radio or television, or by any other news media. This case will, in all probability, be the subject of further prosecution; at least, there is the possibility that it may. In order to avoid undue publicity which could in any way interfere with the rights of the litigants in connection with any further proceedings that might be

next morning at 9:00. Petitioners, two reporters present at the November 1 hearing, wrote articles (published in local newspapers on November 1 and November 2) which summarized the first morning's evidence in detail and acknowledged the writers' awareness that their actions violated the order.

2. On November 2, 1971, the district court issued orders that petitioners show cause why they should not be held in criminal contempt of court (Pet. Apps. D & E). Petitioners answered that the order violated their First Amendment rights. On November 8, 1971, following a hearing on the orders to show cause, petitioners were found guilty of criminal contempt and each was sentenced to pay a fine of $300 (Pet. Apps. G & H). In explaining its reasons for the contempt convictions (Pet. App. F.2–F.7, I.2–I.8), the district court noted, *inter alia,* that even though the hearing on November 1 had ended at noon, "[n]o effort was made that day, or at any other time, by either respondent to set aside the order, despite the fact that they had all afternoon in which to have contacted

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had in this or other courts, there shall be no reporting of the details of any evidence taken during the course of this hearing today.

"This order is made subject to the sanctions provided by law in the event of any violation of this order.

"Now, gentlemen, by that I do not mean that the press cannot report the fact that a hearing has been held or that a hearing is being held, but it's obvious that the testimony here today could impede another court in its progress toward selecting a jury in this case if such became necessary. Consequently, I do not want—and this order means that there shall be no reporting of the details of the evidence taken in this court today or in any continuation of this trial—of this hearing."

either this Court or the Court of Appeals had they wished to do so. To the knowledge of these reporters, the Fifth Circuit Court of Appeals has a standby panel to handle emergency matters such as this" (Pet. App. I.4; cf. Pet. App. I.6, F.6).

On August 22, 1972, the court of appeals held (Pet. App. A) that although the district court's order prohibiting the publication of testimony violated petitioners' First Amendment rights, they were still subject to a contempt conviction on the ground that "[a]bsent a showing of 'transparent invalidity' or patent frivolity surrounding the order, *it must be obeyed* until reversed by orderly review or disrobed of authority by delay or frustration in the appellate process * * *" (Pet. App. A.12). The court then remanded the case to the district court "for a determination of whether the judgment of contempt or the punishment therefor would still be deemed appropriate in light of the fact that the order disobeyed was constitutionally infirm" (Pet. App. A.17).[4]

[4] 18 U.S.C. 401 provides in pertinent part that "[a] court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as * * * [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." The court of appeals made no effort to reconcile its holding with the language of 18 U.S.C. 401, which permits punishment only for disobedience of "lawful" orders, presumably because it felt that this issue had been resolved by a long line of decisions which, while not discussing the language of Section 401, have nevertheless indicated that punishment may be imposed for disobedience of unlawful orders not challenged by direct appeal. See *Walker* v. *City of Birmingham*, 388 U.S. 307, 314, n. 5; *O'Heaney* v. *United States*, 66 F. 2d 933 (C.A.D.C.), certiorari

On remand, the district judge adhered to his original determination to punish petitioners for contempt. He stated (Pet. App. J.4–J.5):

> It was not the fact that this Court then and now believes its order was a valid one that alone gave rise to the contempt citation. It was the fact that these defendants, rather than seek an available judicial review of the Court's order, decided instead to announce to Court personnel that they were going to violate the order and then, after violating the order, contemptuously announced to the public, at the end of their published articles, that they had published this story despite an order of Court ordering them not to do so. It was primarily this public display of utter contempt for this Court's order that prompted the contempt citation. The defendants, as noted by the Court of Appeals, may "not now escape the inescapable legal conse-

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denied, 290 U.S. 683; *McCann* v. *New York Stock Exchange*, 80 F. 2d 211 (C.A. 2), certiorari denied *sub nom. McCann* v. *Leibell*, 299 U.S. 603. See, also, *Trickett* v. *Kaw Valley Drainage Dist.*, 25 F. 2d 851 (C.A. 8), certiorari denied, 278 U.S. 624; *Kaspar* v. *Brittain*, 245 F. 2d 92 (C.A. 6), certiorari denied, 355 U.S. 834; *Clatt* v. *Hammonds*, 305 F. 2d 565 (C.A. 5); *Nelson* v. *Steiner*, 279 F. 2d 944 (C.A. 7); *United States* v. *Schine*, 260 F. 2d 552 (C.A. 2), certiorari denied, 358 U.S. 934; *United States* v. *Thompson*, 349 F. 2d 665 (C.A. 2); *Schwartz* v. *United States*, 217 Fed. 866 (C.A. 4). Cf. *United States* v. *United Mine Workers*, 330 U.S. 258, and *United States* v. *Shipp*, 203 U.S. 563, both involving disobedience of preliminary injunctions which had been issued to preserve the *status quo* pending a determination of whether there was jurisdiction to grant the ultimate relief. Such orders are within the inherent power of a court and cannot be classified as "unlawful." *United States* v. *United Mine Workers*, *supra*, 330 U.S. at 292; *United States* v. *Shipp*, *supra*, 203 U.S. at 573.

quences for their flagrant, intentional disregard of the mandates of a Court."

On appeal a different three-judge panel of the court of appeals affirmed the contempt conviction, after noting that it had not been persuaded that its earlier holding was wrong and that petitioners had not petitioned for rehearing *en banc* or certiorari (Pet. App. B.3). On April 23, 1973, following petitioners' motion, the court of appeals ordered a stay of its mandate pending timely filing of a petition for certiorari (Pet. App. N).[5]

ARGUMENT

Petitioners' basic argument is that the district court's order forbidding publication of hearing testimony was "patently invalid" and that therefore disobedience was justified and they were not required to make any effort to obtain orderly appellate review. Petitioners rely on various decisions of this Court upholding the freedom of the press to report on proceedings in open court, which suggest heavy presumptions against the validity of prior restraints (Pet. 8–16). It is our position that the opinion of the

[5] The initial contempt determination was made by the district court *sua sponte*. The United States was not a party to the underlying litigation in which the order that petitioners disobeyed was issued, and the Department of Justice did not seek the imposition of contempt sanctions. When petitioners filed their notices of appeal to the Fifth Circuit, the district judge asked the United States Attorney to defend the judgments of conviction. Our position here is urged solely in defense of a determination of "[a] court of the United States" which has exercised its discretion to punish for disobedience of its orders (18 U.S.C. 401).

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court of appeals (Pet. App. A), on which we principally rely, was not inconsistent with these decisions and correctly resolved the issue before it.

1. While the court of appeals held that the order in question was invalid, the opinion read as a whole makes clear that the district court, faced with the difficult task of reconciling conflicting rights, was not acting "frivolously." As the court below pointed out (Pet. App. A.2), the instant case involves a confrontation between "two of the most cherished policies of our civilization" (*Bridges* v. *California,* 314 U.S. 252, 260)—freedom of the press and the right to a fair and impartial trial. "The balance is delicate with so much at stake, and the equipollence of the interests defies a simple resolution by mere judicial tug-of-war, with the 'lesser' bantam liberty giving way to a weightier, more Herculean one. Cf. Karr v. Schmidt, 5 Cir. (en banc), 1972, 460 F. 2d 609" (Pet. App. A.5). After describing the historical tension between the First and Sixth Amendments (*id.* at A.5–A.6), the court below noted that within the past fifteen years increasing recognition has been given to the very real potential of news media to prejudice the right to fair trial (*id.* at A.6–A.7). See, *e.g., Marshall* v. *United States,* 360 U.S. 310; *Irvin* v. *Dowd,* 36 U.S. 717; *Rideau* v. *Louisiana,* 373 U.S. 723. In *Sheppard* v. *Maxwell,* 384 U.S. 333, this Court emphasized the need for the trial judge to protect the accused from the prejudicial impact of an "omnipresent press" (Pet. App. A.8), so that "the balance is never weighed against the accused" (384 U.S. at 362). "If publicity during the proceedings threatens the fairness of the

trial, a new trial should be ordered. But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception" (*id.* at 363; see Pet. App. A.7–A.8).

The court of appeals observed further (Pet. App. A.9) that the Free Press-Fair Trial Rules for the Eastern District of Louisiana, on which the district court relied in promulgating its order, provide "great elasticity and room for judicial inventiveness" in widely publicized and sensational cases.[6] For example, Local Rule 9 provides (Pet. App. A.9, n. 11) that in such cases the court

> on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and the sequestration of jurors and witnesses, *and any other matters which the Court may deem appropriate for inclusion in such an order.* [Emphasis added.]

Notwithstanding its recognition that *Sheppard* and other recent cases contain strong language urging trial judges to anticipate and prevent prejudicial outside influences in criminal trials, the court of appeals concluded that in the circumstances of the instant case

[6] The local "Free-Press—Fair Trial" rules for each district implement the recommendations which the Judicial Conference of the United States formulated in response to *Sheppard*, *supra*.

no grave and immediate danger justified a restriction on freedom of the press. The court determined that the leading authorities should not be read to limit the right of the press to publish reports of proceedings in open court—although again the difficulty of the problem is illustrated by the "possible exception" suggested by language in *Branzburg* v. *Hayes*, 408 U.S. 665, 685, which stated that newsmen "may be prohibited from attending or publishing information about trials if such restrictions are necessary to assure a defendant a fair trial before an impartial tribunal" (Pet. App. A.10, n. 14).[7]

While the opinion below adequately supports its conclusion that the order in question was not "transparently invalid," we think that certain other factors reinforce the conclusion that the district court's order was not frivolous. Though overruled by the court of appeals, the trial judge's findings that newspaper descriptions of the hearing would present a serious and imminent threat to the fairness of an upcoming trial

[7] The court of appeals listed some additional factors leading to its finding that the order was invalid (Pet. App. A.10-A.12): The threatened disruption of proceedings seemed less severe here than in cases such as *Sheppard*, *supra*; the subject matter of the hearing was particularly newsworthy; the injunction was directed at non-parties to the lawsuit, with no intent to insure the fairness of an *ongoing* trial; the trial judge had alternative remedies available, such as continuance or change of venue, which—though not always totally effective—would have been preferable to a ban on publication; and, finally, it may be inappropriate for a federal court to anticipate denials of constitutional rights in state courts and to "polic[e] the climate of the community to insure a sterile" state trial (*id.* at A.11).

had substantial evidentiary support. The potential for wide-spread and intensive publicity about the hearing was great in view of the sensational nature of the accusations on both sides. Moreover, the danger of prejudice to Stewart's Sixth Amendment rights appeared to be imminent, since the prescriptive period for trial on the state charges was about to run (Pet. App. F.3). We observe, moreover, that immediacy of danger might validly be judged with reference not to the estimated time of trial, but rather to the time at which irreparable damage to constitutional rights actually occurs. In the instant case, it was not unreasonable to conclude that newspaper accounts of the hearing might cause, at the time of publication itself, irreversible prejudice to the rights of the accused and the public to have an impartial jury trial at the place where the crime was allegedly committed (see Pet. App. F.5). Under these circumstances, petitioners had no right to disregard the district court's order as frivolous or transparently invalid. See *United States* v. *Tijerina*, 412 F.2d 661, 666–667 (C.A. 10), certiorari denied, 396 U.S. 990.

2. We rely as well on that part of the opinion by the court of appeals holding that petitioners may not escape a contempt conviction on the ground that the order which they knowingly violated turned out to be invalid (Pet. App. A.12–A.17). As the court noted (*id.* at A.12–A.13), it is well-settled that invalidity is no defense to criminal contempt; absent a showing of "transparent invalidity," court orders must be obeyed until reversed by orderly review—a principle that applies even where the order in question violates First Amendment

rights. *E.g., Walker* v. *City of Birmingham*, 388 U.S. 307.[8]

The court of appeals observed further that the unique role and problems of the judiciary justify the inviolability of its orders, as opposed to the mandates of legislators or executive agencies (Pet. App. A.13). Nor should these principles be any less controlling when the interest at stake is free press

[8] In *Walker*, *supra*, this Court upheld the criminal convictions of a group of black ministers for violating an *ex parte* injunction issued by an Alabama court forbidding them from engaging in street demonstrations without a municipal permit as required by city ordinance. The petitioners in *Walker* attacked the injunction and the city parade ordinance on First Amendment grounds and argued that the ordinance had been discriminatorily applied (prior to the injunction, requests for demonstrations had been twice denied). On appeal this Court held that petitioners' constitutional challenges—which included arguments of prior restraint, see 388 U.S. at 342—did not need to be considered at the contempt hearing since no effort had been made either to dissolve the injunction or to comply with it by applying for a permit.

Petitioners in the instant case attempt to distinguish *Walker* and related decisions on the ground that there is a distinction between the communication of ideas by "marching and picketing (the conduct at issues in *Walker*)" and communication by pure speech, such as the newspaper accounts involved in the case at hand (Pet. 14). In the case at hand, however, where free expression threatens the right to a fair trial, the interest involved in protecting an accused from prejudicial news stories is highly analogous to that involved in protecting people from excessive obstructions to the conduct of their daily affairs—the consideration at the heart of the speech/conduct distinction justifying reasonable regulations as to the time and place of street demonstrations. Indeed, it would seem that a restriction on speech might more likely be upheld if the competing value were the right to a fair trial—"the most fundamental of all freedoms," *Estes* v. *Texas*, 381 U.S. 532, 540–541—rather than public convenience.

rather than free speech (*id.* at A.14). Finally, the court concluded, after thorough discussion (*id.* at A.14–A.16), that the rule requiring obedience to invalid (though not "frivolous") court orders presupposes the existence of three conditions, all of which it found to be present in the instant case: "(i) [T]he court issuing the injunction must enjoy subject matter and personal jurisdiction over the controversy; (ii) adequate and effective remedies must be available for orderly review of the challenged ruling; and (iii) the order must not require an irretrievable surrender of constitutional guarantees." Especially significant in regard to the latter two requirements is the observation in the opinion below (*id.* at A.15; footnote omitted) that, "as the District Court's findings of fact establish, both the District Court and the Court of Appeals were available and could have been contacted that very day, thereby affording speedy and effective but *orderly* review of the injunction in question swiftly enough to protect the right to publish news while it was still 'news'."

Given the availability of rapid review procedures, the injury to First Amendment values caused by compliance with the District Court's order until it was lifted would have been slight or nonexistent.[9] It is appropriate to insist upon that compliance in an area where some restrictions on the press may be justified by Sixth

[9] Petitioners are in a poor position to challenge the adequacy of the judicial remedy, since they failed to seek relief from the order of the district court. Had they sought such relief, and had it not been promptly forthcoming, disobedience to the order in such circumstances would have presented a different problem.

Amendment necessities, because newsmen ought not to be encouraged to guess at their peril, and the peril of the litigants, whether a court order is lawful. Indeed, the net effect of a rejection of the Fifth Circuit's holding may be a material diminution of the access of the press to information about judicial proceedings in cases of this nature, since trial judges may choose to resort to *in camera* hearings when they anticipate that widespread public dissemination of information about such proceedings may do serious injury to Sixth Amendment interests. In such cases, the option of self-help would be foreclosed, and the press would be forced to the recourse of judicial review.

3. Petitioners (and the various *amicus* briefs) rely heavily on certain decisions which they claim are inconsistent with the result reached by the court of appeals in the instant case.

a. *Thomas* v. *Collins*, 323 U.S. 516, which petitioners call "dispositive" (Pet. 13), does not support their position. That case involved a Texas statute requiring labor leaders to procure an organizer's card before soliciting memberships in unions. Thomas was held in criminal contempt and sentenced to confinement for purposefully disobeying a temporary *ex parte* court order restraining him from violating the statute. Application for a writ of habeas corpus was made to the Texas Supreme Court, which sustained the contempt conviction. On appeal, this Court invalidated the statute as violative of the First Amendment. Petitioners seek to extract from *Thomas* the principle that an in-

valid restriction on free speech through the device of a court order is subject to collateral attack no less than an invalid statute purporting to achieve the same result (Pet. 13).

The Court in *Thomas,* however, considered the appellant's constitutional objections only because the Texas Supreme Court, viewing habeas corpus as an appropriate vehicle for challenging statutory validity, had itself passed judgment on and upheld the Act. As the Court explained (323 U.S. at 524, n. 7), the Texas "court reviewed the contempt commitment over appellee's strenuous jurisdictional objections. Since the state court has determined the validity of the statute and its application in the habeas corpus proceeding, as against the objections on federal constitutional grounds, those questions are properly here on this appeal. *Bryant* v. *Zimmerman,* 278 U.S. 63. The State concedes this." Obviously, the State of Texas was free, if it so chose, to accept invalidity of the order as a defense to a contempt conviction, and this Court disposed of the case on that premise. Thus there was no need in *Thomas* to consider the constitutional necessity of permitting collateral attack on an invalid restriction during an appeal from a contempt conviction, and the only issue explicitly considered was the constitutionality of the Texas statute as applied.

Moreover, unlike petitioners here, the petitioner in *Thomas* had no adequate remedies available for orderly review. The order was served upon him in Houston, a distance of 170 miles from the issuing court in Austin, six hours before his scheduled speech.

Significantly, the opinion in *Thomas* reflected the court's implicit assessment that orderly review was not even a practicable choice. See 323 U.S. at 536.

b. In attempting to demonstrate a conflict between the circuits, petitioners point to a Seventh Circuit decision, *In re Oliver*, 452 F.2d 111 (Pet. 16–17). That case involved a disciplinary proceeding against an attorney for violating a general policy statement, adopted by a federal district court, containing a blanket prohibition against all extrajudicial comment by counsel in regard to all pending cases. The court of appeals, in striking down the general rule, held that the validity of the rule could be challenged even after a knowing violation. The court rejected the argument that cases such as *Walker, supra,* where a knowingly violated injunction is challenged, are equivalent to cases where a local rule of court is violated and its validity challenged.

The rationale behind the court's distinction between local rules and injunctions, however, indicates that the court order in the instant case would have been considered by the Seventh Circuit to be analogous to the injunction involved in *Walker*. The reasons given in *Oliver* to support its distinction between disobedience of an injunction and of a local rule were (1) that a person who has neither violated a local rule nor been personally advised of the risk of disciplinary action may lack standing to attack the rule, and (2) that circumstances could exist in which one might violate a local rule though unaware either of the rule

itself or of its application to him at the time of the violation. 452 F. 2d 113.

Neither reason can be invoked in the instant case, in which a court order was issued in the presence of a specific group of spectators—including petitioners—forbidding any published reports of evidence overheard that morning. Petitioners do not even assert that they lacked standing for direct review; nor is it reasonably likely that spectators present at the hearing might not have known of the order or of its application to them. Moreover, unlike the court order in the case at hand, the policy statement at issue in *Oliver*, with its blanket ban on all comment in all cases, failed to reflect even a token regard for the question whether the prohibited conduct would prejudice the fair administration of justice. See 452 F. 2d at 115. The court therefore held that the local rule makes "a mockery of the free speech guaranty of the first amendment" (*id.* at 115), implying an assessment, in accordance with the principles underlying the instant decision, that the rule was "transparently invalid."

c. The state decisions on which petitioners rely do not demonstrate a conflict with the Fifth Circuit as to the propriety of constitutional challenges to a court order following a knowing violation. These cases—*Phoenix Newspapers, Inc.* v. *Superior Court*, 418 P. 2d 594 (Ariz.); *State ex rel. Superior Court of Snohomish County* v. *Sperry*, 483 P. 2d 608 (Wash.); *Wood* v. *Goodson*, 485 S.W. 2d 213 (Ark.)—involved the interpretation of provisions in state constitutions

that "every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."[10] This language has been interpreted as an absolute prohibition on prior restraints and thus has been considered stronger in some respects than the command of the First Amendment. *Phoenix Newspapers, supra,* 418 P. 2d at 596. In light of this reasoning, the court in *Phoenix Newspapers* voided the court order forbidding publication of hearing testimony and did not even reach the issue of validity under the federal constitution.[11]

In short, no judicial authority commands a result different from that reached in the instant case. As the court below held, the determination of the district court was neither transparently invalid nor patently frivolous. Accordingly, under *Walker* v. *City of Birmingham,* the contempt order was not unconstitutional.

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[10] See Arizona Constitution, Art. 2, §6; Washington Constitution, Art. 1, § 5; Arkansas Constitution, Art. 2, § 6 (containing a minor variation, provides in pertinent part: "[A]ll persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right").

[11] The state cases cited are distinguishable on additional grounds. For example, in *Sperry, supra,* the Washington Supreme Court held that a trial judge presiding over a murder trial could not by prior order forbid the reporting of certain proceedings, including testimony ruled inadmissible. The appellant newspaper reporters had deliberately violated the orders by writing accounts of evidence excluded after a hearing in the jury's absence; the reporters were nevertheless allowed to make a collateral attack on the order in appealing a contempt judgment. The court in *Sperry* accepted the applicability of *Walker* v. *City of Birmingham* but held that the order was

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1973.

"patently invalid" under the particular circumstances. The court stressed that the judge had available a less drastic alternative—sequestration of the jury during the trial—a procedure unavailable in the instant case. It also observed, *inter alia*, that there was little chance for adequate and effective review on direct appeal (483 P. 2d at 611) and that on a direct appeal the reporters would have had standing problems under state law (concurring opinion, 483 P. 2d at 614). See similarly *Wood* v. *Goodson*, *supra*.

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